



COUNTY OF LOS ANGELES
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ANDREA SHERIDAN ORDIN
County Counsel

May 18, 2011

TO: SACHI A. HAMAI
Executive Officer
Board of Supervisors

Attention: Agenda Preparation

FROM: JOHN F. KRATTLI *RFW (for JFK)*
Senior Assistant County Counsel

RE: **Inge Wiersema v. County of Los Angeles, et al.**
Los Angeles Superior Court Case No. SC 097 130

Attached is the Agenda entry for the Los Angeles County Claims Board's recommendation regarding the above-referenced matter. Also attached are the Case Summary, the Summary Corrective Action Plan, and the Corrective Action Plan to be made available to the public.

It is requested that this recommendation, the Case Summary, the Summary Corrective Action Plan, and the Corrective Action Plan be placed on the Board of Supervisor's agenda.

JFK:rfm

Attachments

Board Agenda

MISCELLANEOUS COMMUNICATIONS

Los Angeles County Claims Board's recommendation: Authorize settlement of the matter entitled Inge Wiersema v. County of Los Angeles, et al., Los Angeles Superior Court Case No. SC 097 130, in the amount of \$390,000 and instruct the Auditor-Controller to draw a warrant to implement this settlement from the Department of Public Works' budget.

This dangerous condition lawsuit arises from personal injuries sustained in a bicycle accident which occurred on Pacific Coast Highway.

CASE SUMMARY

INFORMATION ON PROPOSED SETTLEMENT OF LITIGATION

CASE NAME	Inge Wiersema v. County of Los Angeles, et al.
CASE NUMBER	SC097130
COURT	Los Angeles Superior Court
DATE FILED	06/12/2008
COUNTY DEPARTMENT	Waterworks District/Department of Public Works
PROPOSED SETTLEMENT AMOUNT	\$ \$390,000
ATTORNEY FOR PLAINTIFF	Vana Parker Margolese, Esq.
COUNTY COUNSEL ATTORNEY	Tighe F. Hudson Principal Deputy County Counsel
NATURE OF CASE	<p>This lawsuit arises from a bicycle accident which occurred midday on May 28, 2007, Inge Wiersema (then age 36) was thrown from her bicycle when she struck a pothole-like condition involving a Waterworks District manhole/valve cover on the State's right of way. The accident occurred on a bicycle path which exists along this section of Pacific Coast Highway.</p> <p>State had issued Waterworks District an encroachment permit which contained an indemnify provision obligating Waterworks</p>

District to indemnify State for any loss or damages arising from claims against State involving Waterworks District activity on the State's right of way.

As a result of the fall, plaintiff sustained serious injuries and was airlifted by helicopter to the UCLA Medical Center. She was hospitalized for compression spinal fractures and a broken collar bone. She underwent an open reduction and internal fixation of her left clavicle and a steel plate was inserted.

Due to the inherent risks and uncertainties involved in a trial, the potential liability and potential exposure to an adverse verdict, including liability to indemnify State for any judgment against it, and attorneys' fees, Waterworks District proceeded with settlement negotiations which resulted in this recommended settlement with the plaintiff and State.

PAID ATTORNEY FEES, TO DATE	\$	\$87,463
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PAID COSTS, TO DATE	\$	\$30,281
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Summary Corrective Action Plan

County of Los Angeles Department of Public Works



The intent of this form is to assist departments in writing a corrective action plan summary for attachment to the settlement documents developed for the Board of Supervisors and/or the County of Los Angeles Claims Board. The summary should be a specific overview of the claims/lawsuits' identified root causes and corrective actions (status, time frame, and responsible party). This summary does not replace the Corrective Action Plan form. If there is a question related to confidentiality, please consult County Counsel.

Claim:	Inge Wiersema
Date of incident/event:	May 28, 2007
Briefly provide a description of the incident/event:	On May 28, 2007, Ms. Inge Wiersema (plaintiff) was bicycling on the shoulder of southbound Pacific Coast Highway (PCH) at Le Herran Road, when she attempted to avoid an exposed Waterworks manhole cover that was not flush with the surrounding roadway pavement. As a result, the plaintiff fell from her bicycle and sustained injuries to her left shoulder, ribs, and spine.

1. Briefly describe the root cause of the claim/lawsuit:

Waterworks District No. 29, Malibu (Waterworks), owns and maintains the subject manhole located on the shoulder of southbound PCH, between the edge of the southbound traveled way and the guardrail. The manhole provides access to a water valve that is connected to an underground waterline. At the time of the incident, the asphalt covering the manhole cover had been chipped away, which left the manhole cover exposed and not flush with the surrounding roadway pavement. Additionally, there were pavement markings adjacent to the subject manhole cover that appeared to be consistent with markings associated with the subject Waterworks facility.

Based on our investigation, it was determined that the California Department of Transportation (Caltrans) had repaved PCH in 2000, including the shoulder containing the subject manhole. It is unclear whether under Caltrans' reconstruction specifications, the manhole should have been made flush with the surrounding pavement by their contractor.

According to Waterworks, valves are periodically tested by Waterworks personnel through opening and closing the valve in a procedure described as exercising the valve. It is not necessary for Waterworks personnel to chip away all asphalt over the entire manhole cover in order to access and exercise the water valve below. Furthermore, we have no record of work orders for the incident location prior to the incident.

From June 2002 through May 2007, Caltrans conducted at least 32 monthly inspections of the incident location. Caltrans apparently also conducted weekly inspections of the roadway and shoulders. Caltrans contends that they did not have notice of the condition of the subject manhole cover prior to the incident. Caltrans produced photo logs from 2003 that appear to show the subject manhole cover as covered by asphalt, resulting in a smooth pavement surface. No pavement markings can be seen near the subject manhole cover in the photographs. The photographs indicate that the subject manhole was exposed subsequent to 2003 and existed up to the incident date.

To date, it has not been determined who chipped the asphalt away to expose the manhole cover. However, since there are no other utilities at or near the incident location, it is highly likely that Waterworks personnel may have exposed the manhole cover. Furthermore, the pavement markings around the subject manhole suggest that Waterworks personnel may have been at the incident location prior to the incident.

County of Los Angeles Department of Public Works
Summary Corrective Action Plan

2. Briefly describe recommended corrective actions:
(Include each corrective action, due date, responsible party, and any disciplinary actions if appropriate)

On June 30, 2009, Waterworks field personnel in the Malibu area were informed during a safety meeting that temporary asphalt repairs should be done following any asphalt removal operation on covered manholes. Such work should also be immediately reported to the Water Service Supervisor. Additional safety meetings were held on April 22 and May 13, 2010, with Waterworks field personnel in both the Malibu and Lancaster areas respectively, and a memorandum on this policy was provided to all Waterworks field personnel.

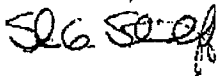
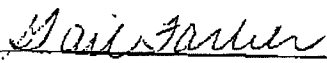
As of August 2010, Waterworks began working with Caltrans to adjust the four existing Waterworks manholes along PCH that are not flush with the roadway pavement. The four manholes will be made flush by March 2011 by Caltrans, or if necessary, by Waterworks' own forces.

For future resurfacing operations in areas where Waterworks has existing manholes, Waterworks will ensure that all affected manholes are adjusted to grade, either through other agencies or, if necessary, Waterworks will adjust any affected manholes themselves.

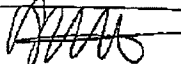
Starting in February 2011, Waterworks will review the Caltrans-required indemnity language in the Caltrans permit with County Counsel. We intend, through our combined efforts, to try to convince Caltrans to drop the permit requirement to defend and indemnify Caltrans' own active negligence.

3. State if the corrective actions are applicable to only your department or other County departments:
(If unsure, please contact the Chief Executive Office Risk Management Branch for assistance)

- ☐ Potentially has a Countywide implication.
- ☐ Potentially have implications to other departments (i.e., all human services, all safety departments, or one or more other departments).
- ☒ Does not appear to have Countywide or other department implications.

Signature: (Risk Management Coordinator)	Date:
	1/24/2011
Steven G. Steinhoff	
Signature: (Director)	Date:
Gail Farber 	2-22-11

Chief Executive Office Risk Management Branch

Name:	Date:
LEO COSTANTINO	1/26/11
Signature: 	Date:

YTL:psr
P4:SCAP WERSEMA2

**DEPARTMENT OF PUBLIC WORKS
CORRECTIVE ACTION PLAN**

CLAIM OF: Inge Wiersema

INCIDENT DATE: May 28, 2007

INCIDENT LOCATION: Southbound Pacific Coast Highway at La Herran Road

RISK ISSUE:

The County of Los Angeles Waterworks District could be held liable as negligent by failing to address a potentially dangerous condition of its water facilities, which lie within the jurisdiction of another government entity.

INVESTIGATIVE REVIEW:

On May 28, 2007, Ms. Inge Wiersema (plaintiff) was bicycling on the shoulder of southbound Pacific Coast Highway (PCH) at Le Herran Road when she tried to avoid an exposed Waterworks manhole cover that was not flush with the surrounding roadway pavement. As a result, the plaintiff fell from her bicycle and sustained injuries to her left shoulder, ribs, and spine.

Waterworks District No. 29, Malibu (Waterworks), owns and maintains the subject manhole located on the shoulder of southbound PCH, between the edge of the southbound traveled way and the guardrail. The manhole provides access to a water valve that is connected to an underground waterline. At the time of the incident, the asphalt covering the manhole cover had been chipped away, which left the manhole cover exposed and not flush with the surrounding roadway pavement. Additionally, there were pavement markings adjacent to the subject manhole cover that appeared to be consistent with markings associated with the subject Waterworks facilities.

Based on our investigation it was determined that the California Department of Transportation (Caltrans) had repaved PCH in 2000, including the shoulder containing the subject manhole. It is unclear whether under Caltrans' reconstruction specifications the manhole should have been made flush with the surrounding pavement by their contractor.

According to Waterworks, valves are periodically tested by Waterworks personnel through opening and closing the valve in a procedure described as exercising the valve. It is not necessary for Waterworks personnel to chip away all asphalt over the entire manhole cover in order to access and exercise the water valve below. Furthermore, we have no record of work orders for the incident location prior to the incident.

From June 2002 through May 2007, Caltrans conducted at least 32 monthly inspections of the incident location. Caltrans apparently also conducted weekly inspections of the roadway and shoulders. Caltrans contends that they did not have notice of the condition of the subject manhole cover prior to the incident. Caltrans produced photo logs from 2003 that appear to show the subject manhole cover as covered by asphalt, resulting in a smooth pavement surface. No pavement markings can be seen near the subject manhole cover in the photographs. The photographs indicate that the subject manhole was exposed subsequent to 2003 and existed up to the incident date.

To date, it has not been determined who chipped the asphalt away to expose the manhole cover. However, since there are no other utilities at or near the incident location, it is highly likely that Waterworks personnel may have exposed the manhole cover. Furthermore, the pavement markings around the subject manhole cover suggest that Waterworks personnel may have been at the incident location prior to the incident.

POLICY ISSUES:

Waterworks personnel periodically open manholes to access and test the water valves by opening and closing the valve in a procedure described as exercising the valve. Following this procedure, Waterworks personnel would mark the roadway pavement adjacent to the manhole to indicate the number of turns needed to open and close the valve. The same information would also be recorded in a log.

CORRECTIVE ACTION:

On June 30, 2009, Waterworks field personnel in the Malibu area were informed during a safety meeting that temporary asphalt repairs should be done following any asphalt removal operation on covered manholes. Such work should also be immediately reported to the Water Service Supervisor. Additional safety meetings were held on April 22 and May 13, 2010, with Waterworks field personnel in both the Malibu and Lancaster areas respectively, and a memorandum on this policy was provided to all Waterworks field personnel.

As of August 2010, Waterworks began working with Caltrans to adjust the four existing Waterworks manholes along PCH that are not flush with the roadway pavement. The four manholes will be made flush by March 2011 by Caltrans, or if necessary, by Waterworks' own forces.

For future resurfacing operations in areas where Waterworks has existing manholes, Waterworks will ensure that all affected manholes are adjusted to grade, either through other agencies or, if necessary, Waterworks will adjust any affected manholes themselves.

Reviewed & Recommended:

Date _____

Approved:

Date _____

www